



In the Supreme Court of the

United States

OCTOBER TERM, 1976

No. 76-815

RAMON R. APPAWORA,

*Appellant,*

v.

MYRON BROUGH,

*Appellee.*

APPEAL FROM THE SUPREME COURT OF THE  
STATE OF UTAH

BRIEF OPPOSING MOTION TO DISMISS

F. BURTON HOWARD  
STEPHEN G. BOYDEN  
SCOTT C. PUGSLEY  
of  
BOYDEN, KENNEDY, ROMNEY  
& HOWARD  
1000 Kennecott Building  
10 East South Temple  
Salt Lake City, Utah 84133  
Attorneys for Appellant

**In the Supreme Court of the  
United States**

---

**OCTOBER TERM, 1976**

---

**No. 76-815**

---

**RAMON R. APPAWORA,**

*Appellant,*

v.

**MYRON BROUGH,**

*Appellee.*

---

**APPEAL FROM THE SUPREME COURT OF THE  
STATE OF UTAH**

---

**BRIEF OPPOSING MOTION TO DISMISS**

---

Appellant Appawora submits this Brief in opposition to the Motion to Dismiss filed herein by appellee and in response to the Brief of the State of Utah, *Amicus Curiae*, in Support of Appellee.

**I**

*The Status of the Ute Tribe's Reservation*

The arguments of both Appellee Brough and the State of Utah attempt to convince this Court that the

decision of the Utah Supreme Court was correct in holding that the Indian reservation upon which appellant resides, and within the boundaries of which the accident in question occurred, has been so diminished by Congress as to now include only the tracts of land held in trust for the tribe or its members. Appellant Appawora would again remind this Court that this issue was neither raised, briefed nor argued in the trial court, and was only raised before the Utah Supreme Court in appellant's petition for rehearing after that court had already rendered its decision disestablishing the Ute Reservation. The materials which are now cited have never been presented to the Utah courts in an adversary context.

As noted in the State's amicus brief, the United States District Court for the District of Utah has already ruled in favor of the continuing existence of the original exterior boundaries of the Ute Tribe's reservation and has enjoined the State of Utah from asserting any jurisdiction over Ute Indians based on the Utah Supreme Court's decision herein. Appellant is prepared, at an appropriate time and if necessary to rebut the legislative materials presented in the State's amicus brief and in the Motion to Dismiss, and to demonstrate the continuing existence of the original reservation boundaries. It is precisely because these materials have never been presented in any adversary context herein that review is needed. The presumption in reservation status cases is against either termination or diminishment. See *De Coteau v. District County Court*, 420 U.S. 425, 444 (1975).

## II

*The Appropriateness of the Appeal*

Appellee Brough does not address the issue of the Utah court's declaring unconstitutional certain federal statutes. The State's amicus brief begs the question, under its points II and III, by asserting that the federal statutes in question do not apply since the Ute Tribe's reservation has been terminated or disestablished. The Utah Supreme Court has either taken judicial notice of contested facts regarding the status of the Ute Tribe's reservation, or it has declared unconstitutional those specific federal statutes which deny to the State jurisdiction in "Indian country." Under either characterization, plenary review herein will greatly serve the cause of proper judicial administration as well as resolve important issues of federal Indian law.

## III

*The Alleged Waiver of the Jurisdictional Defenses*

Appellee's point 2 asserts that appellant has somehow waived his jurisdictional defenses by making a special appearance herein. Even assuming, arguendo, that it would be possible for an Indian to waive the personal jurisdictional defense, the decisions of this Court are clear that a state may obtain subject matter jurisdiction over reservation Indians only by complying with 25 U.S.C. §1321 et seq. See *Kennerly v. District Court*, 400 U.S. 423 (1971) and *Fisher v. District Court*, 44 U.S.L. Week 3490 (U.S. Mar. 1, 1976).

*Conclusion*

Appellant respectfully requests that appellee's Motion to Dismiss be denied and that either the decision of the Utah Supreme Court be summarily reversed (see *Kennerly v. District Court*, and *Fisher v. District Court*, both *supra*), or that this appeal be scheduled for plenary consideration by the Court.

Respectfully submitted,

F. Burton Howard

Stephen G. Boyden

Scott C. Pugsley

1000 Kennecott Building

Ten East South Temple

Salt Lake City, Utah 84133

Attorneys for Appellant